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10/574,488	11/15/2006	Stefano Visona	VISIONA 1	9094
1444 7590 08/19/2009 BROWDY AND NEIMARK, P.L.L.C. 624 NINTH STREET, NW SUITE 300 WASHINGTON, DC 20001-5303				
EXAMINER				
TEATERS, LINDSEY C				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/574,488

Applicant(s)

VISONA, STEFANO

Examiner

LINDSEY C. TEATERS

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date 04/03/2006
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Specification

1. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: Cake Decorating Machine.

Claim Objections

2. Claims 1 and 2 are objected to because of the following informalities: Claim 1, line 6, "an able to" should be --and able to--. Claim 2, line 4, "support base 4" should be --support base (4)--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Claim 1 fails to include a transitional phrase such as *comprising*, *consisting*, or *consisting essentially of* after the preamble. It is unclear whether the claim language should be construed as open-ended or closed-ended as well as whether it is the cake or the machine for decorating that includes the limitations provided in claim 1. The claims

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are, for purposes of examination, being examined in an open-ended fashion as if the transitional phrase included is *comprising*.

6. Claim 4 recites the limitation "said movement" in line 2. There is insufficient antecedent basis for this limitation in the claim. A movement is not previously cited in claims 1 or 4.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 6, and 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Warning (US 3,717,752), cited by applicant, in view of Shutic et al (US 2002/0096111 A1).

Warning teaches a machine (fig 1) for decorating cakes (11), having at least one side surface and a top surface, with an ingredient (inside 21) in granular form, comprising a support structure (legs and stand, fig 1), distribution means (22) mounted on the support structure and able to project the ingredient in granular form in at least one direction of flow (fig 2), a support base (16) suitable for supporting the food product, movement means (16, 18, col. 2, lines 38-41) mechanically connected to the support base so as to cause rotation of the food product in the vicinity of the distribution means and in such a way as to interfere with the flow so as to sprinkle the ingredient in granular form over at

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least one portion of the surface of the food product (col. 2, lines 36-46), the distribution means having at least one supply mouth (45) for forming the flow of granular ingredient, and characterized in that the distribution means can be moved by kinematic means so as to assume several positions along at least one portion of the side or top surface of the food product (station 20 is independent and can be moved closer or farther from food product as well as the supply plates 41 can be changed), the support base is connected at one end to a central transmission shaft (on motor 18) through connection means (col. 3, lines 38-41), the central transmission shaft receiving its movement from the movement means (18), the machine can be inserted in a production line (fig 1) of the food product and which comprises transportation means (10) for conveying the food product from an entrance opening to an exit opening causing the food product to pass in the vicinity of the distribution means.

Warning fails to teach that the distribution means comprises at least one rotor provided with a plurality of radial blades actuated by first motor means and seated inside a housing. Shutic et al, however, teaches a powder coating system (fig 2) which utilizes a rotor (shaft of 178) with a plurality of radial blades (186) inside of a seated housing to meter and move powder through the assembly (paragraphs [0133] and [0135]).

In view of Shutic et al's teachings, it would have been obvious to one of ordinary skill in the art at the time of invention to utilize a rotor with blades as an alternative to the distribution means taught by Warning. Closed propeller type dispensers offer even, well-

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mixed and separated flow, and an efficient method of monitoring how much ingredient is being used.

9. Claims 2-4 and 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Warning (US 3,717,752), cited by applicant, and Shutic et al (US 2002/0096111 A1), as applied to claim 1 above, and further in view of Hettinger (US 2,553,191), cited by applicant.

Warning teaches that the movement means comprise rotation means (18) and the distribution means project the flow of granular ingredient over a side surface of the food product (fig 2).

Warning modified by Shutic et al fails to teach that the movement means comprises translation means able to move the support base between a rest position for loading and unloading the food product, and an operating position in which the food product is made to rotate by rotation means, the translation is substantially vertical and parallel to the side surface of the food product, the support base is able to receive from or transfer to the transportation means the food product when it is in the rest position, and where the support base is raised in the operating position, and stopping means situated in the vicinity of the support base to allow stoppage and loading of the food product onto the support base. Hettinger, however, teaches support bases (22) able to receive from or transfer to transportation means (27-28) food products (10) in a rest position and in which the support base is raised with respect to the transportation means in the operating

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position (fig 1) and stopping means in the vicinity of the support base to allow loading and unloading of the food product onto the support base (col. 2, lines 21-45).

In view of Hettinger's teachings, it would have been obvious to one of ordinary skill in the art at the time of invention to load and unload the food products on to the support base, taught by Warning as modified by Shutic et al, while in a rest position, and rotate the food products in a raised operating position. Products on conveyor production lines are commonly lifted up from the conveyor at each work station and then set back down upon completion so that the conveyor does not obstruct the process and so that all sides of the product can be accessed easily.

10. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Warning (US 3,717,752), cited by applicant, in view of Shutic et al (US 2002/0096111 A1), as applied to claim 1 above, and further in view of Coffee (US 3,905,330).

Shutic et al also teaches that each radial blade comprises a first portion which extends along the lie of a radial plane parallel to the axis of rotation (186).

Warning modified by Shutic et al fails to teach that each radial blade comprises a second portion inclined with respect to the first portion with a different inclination and orientation of adjacent blades so as to create a uniform flow along the whole extension of the supply mouth. Coffee, however, teaches an apparatus for dispersing particles

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utilizing a bladed rotor assembly (fig 1) where the outer portions of the blades (4) are inclined so as to facilitate uniform flow out of the supply mouth (2).

In view of Coffee's teachings, it would have been obvious to one of ordinary skill in the art at the time of invention to incline a portion of the radial blades, taught by Warning as modified by Shutic et al. Designs for turbine or propeller blades often take an inclined foil orientation in order to improve efficiency and uniformity of flow.

11. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Warning (US 3,717,752), cited by applicant, in view of Shutic et al (US 2002/0096111 A1), as applied to claim 1 above, and further in view of Morine et al (US 4,043,294).

Warning modified by Shutic et al discloses the claimed invention as set forth above except that the kinematic means comprise at least one linear actuator mechanically associated with the distribution means so as to cause movement thereof. Morine et al, however, teaches an icing distributor for the side surfaces of cakes (fig 1) wherein the nozzle or distributor (16) is linearly adjustable (col. 3, lines 1-35).

In view of Morine et al's teachings, it would have been obvious to one of ordinary skill in the art at the time of invention to utilize a linear actuator to move the distribution means, taught by Warning as modified by Shutic et al. It is important to be able to vary the distance between the distribution means and the food product to compensate for

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changes in size of the food product and density with which the cake is covered with granular ingredient.

12. Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Warning (US 3,717,752), cited by applicant, in view of Shutic et al (US 2002/0096111 A1), as applied to claim 1 above, and further in view of Barfus (US 4,721,455).

Warning modified by Shutic et al discloses the claimed invention as set forth above except a screening element for protecting the top surface of the food product from the flow of ingredient in granular form, the screening element a box-shaped structure provided with an opening for receiving the food product from the side of the top surface, and adjusting means operating the screening element to vary the screened surface area of the food product. Barfus, however, teaches a cake screening device (20) for protecting the top surface of cakes (10) comprising a box-shaped structure for receiving the cake from the side of the top surface (fig 1) and adjusting means (21) by which the distance from the screening device to top surface of the cake can be varied (insertion depth of 21 can be varied).

In view of Barfus' teachings, it would have been obvious to one of ordinary skill in the art at the time of invention to combine a food product screening element with the machine taught by Warning as modified by Shutic et al, since it may be desired for aesthetics to only decorate the sides of the food product and not the top, and presentation is a large factor in the commercial success of food products.

13. Claims 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Warning (US 3,717,752), cited by applicant, in view of Shutic et al (US 2002/0096111 A1) and Barfus (US 4,721,455), as applied to claim 12 above, and further in view of Zimmerman et al (US 6,733,809 B2).

Warning teaches all features of the claimed invention as previously set forth above including a system for supplying the ingredient in granular form comprising at least one hopper (21) and at least one conveying channel (26) connected at a first end to the hopper and at its second end to the distribution means (fig 2), the conveying channel conveys the ingredient in granular form to the distribution means (fig 2, functions equally well for the purposes of uniformly distributing ingredient into the distribution means).

Warning modified by Shutic et al and Barfus fails to teach a system for collecting ingredient in granular form which has not adhered to the surface of the food product after being projected by the distribution means, the system consisting of at least one extractable drawer underneath the support base. Zimmerman et al, however, teaches a system (fig 4) for applying dry toppings on food products, the excess of which is collected in an extractable drawer (90) underneath the food product supporting surface (col. 5, lines 24-34). It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize in the combination of Warning-Shutic et al-Barfus the extractable drawer as taught by Zimmerman et al in order to collect the excess ingredients or toppings if so desired.

14. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Warning (US 3,717,752), cited by applicant, in view of Shutic et al (US 2002/0096111 A1), Barfus (US 4,721,455) and Zimmerman et al (US 6,733,809), as applied to claim 17 above, and further in view of Kreider (US 2003/0217690 A1).

Warning modified by Shutic et al, Barfus, and Zimmerman et al discloses the claimed invention as set forth above except that the conveying channel is a vibrating surface. Kreider, however, teaches an apparatus for distribution particulates onto a substrate utilizing a vibrating conveying surface (paragraph [0030]).

In view of Kreider's teachings, it would have been obvious to one of ordinary skill in the art at the time of invention to utilize a conveying channel, taught by Warning as modified by Shutic et al, Barfus, and Zimmerman et al, which vibrates. The vibrations in the particles keep the particles from caking or adhering to one another and thus facilitate even distribution over the food product.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LINDSEY C. TEATERS whose telephone number is 571-270-5913. The examiner can normally be reached on Mon-Thur 8:30am-6:00pm :: alternating Fri 8:30am-4:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu Hoang can be reached on 571-272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/LINDSEY C TEATERS/
Examiner, Art Unit 3742

08/13/2009
/TU B HOANG/
Supervisory Patent Examiner, Art Unit 3742